



FISCAL MEMORANDUM

HB 403 - SB 378

April 17, 2023

SUMMARY OF BILL AS AMENDED (007535): Regulates the production, sale, purchase, and possession of hemp-derived cannabinoids. Makes it a Class A misdemeanor offense to: knowingly sell or distribute cannabinoid products to a person under 21 years of age; knowingly assist a person under 21 years of age to purchase, acquire, receive, or attempt to purchase cannabinoid products; for a person who is under 21 years of age, knowingly purchase, possess, or accept a cannabinoid product; knowingly distribute samples of products containing a hemp-derived cannabinoid in or on a public street, sidewalk, or park; and fail to keep a product containing a hemp-derived cannabinoid behind the counter of a retail establishment in an area inaccessible to a customer. Establishes that it is a Class A misdemeanor offense to engage in the business of selling or distributing products containing hemp-derived cannabinoids in this state without a valid license. Any product sold in violation of this requirement is subject to seizure and forfeiture.

The Department of Agriculture (DOA) is required to administer this act, including the promulgation of rules, licensing of suppliers and retailers, the creation of a registry of qualified third-party testing laboratories, and inspection and enforcement of licensed suppliers and retailers.

Requires that licensed suppliers and retailers obtain licensure prior to commencement of business or by July 1, 2024, whichever is later. An initial and renewal supplier license will cost \$500 and a retailer license will cost \$250, and both require annual renewal. All proceeds from license fees are to be allocated to the Tennessee Agriculture Regulatory Fund (TAR Fund), which shall be used for the administration of this act. Requires that both suppliers and retailers enter into a contract with a third-party laboratory that has applied and been accepted onto the registry created and maintained by the DOA.

Authorizes the DOA to deny or revoke licenses and issue civil penalties for each violation of rules, as promulgated by the department.

Establishes that, in addition to application of the state and local sales and use tax, all sales of cannabinoid products are subject to an additional 6 percent sales tax, of which proceeds are to be deposited to a special account within the General Fund, with 50 percent of revenue allocated to the Department of Revenue (DOR) and 50 percent allocated to the DOA, to be used exclusively for the regulation of hemp-derived cannabinoid products.

Establishes child-safety packaging and labeling requirements. Establishes restrictions against advertising which may appeal to minors. Establishes that it is a Class C misdemeanor offense to

not store any unconsumed portion of a hemp-derived cannabinoid product in its original packaging.

Effective upon becoming law for purposes of promulgating rules or forms. Effective July 1, 2023 for purposes of the additional six percent sales tax and Class A and Class C misdemeanor offenses. Effective July 1, 2024 for the remainder of provisions.

FISCAL IMPACT OF BILL AS AMENDED:

**Increase State Revenue – \$6,000,000/FY23-24 and Subsequent Years/
Department of Agriculture**

**\$6,000,000/FY23-24 and Subsequent Years/
Department of Revenue**

**\$1,100,000/FY23-24 and Subsequent Years/
Tennessee Agriculture Regulatory Fund**

\$312,100/FY23-24 and Subsequent Years/TBI

**Increase State Expenditures – \$471,000/FY23-24/Department of Revenue
\$463,800/FY24-25 and Subsequent Years/
Department of Revenue**

**\$604,500/FY23-24/Department of Agriculture and
Tennessee Agriculture Regulatory Fund**

**\$1,170,600/FY24-25 and Subsequent Years/
Department of Agriculture and
Tennessee Agriculture Regulatory Fund**

\$200,800/FY23-24 and Subsequent Years/TBI

Other Fiscal Impact – The Department of Agriculture and Department of Revenue will need additional resources including, but not limited to, employing additional staff. The extent and timing of the needed resources will be dependent on the promulgation of rules and the growth of the program and cannot be reasonably quantified at this time. Any additional expenditures incurred will be covered through the revenue collected by the departments.

Assumptions for the bill as amended:

Revenue:

- This legislation creates an additional six percent sales tax on retail sales of products containing hemp-derived cannabinoids, effective on July 1, 2023. Revenue from this tax

is required to be allocated in equal amounts to the DOR and DOA for the regulation of products containing a hemp-derived cannabinoid in this state.

- Currently, state and local sales and use tax is collected on hemp-derived cannabinoids; therefore, this legislation will not result in any additional collections of such tax.
- Based on Fiscal Review Committee research, the market in this state, to which this legislation applies, is valued to exceed \$200,000,000.
- It is assumed that the market value of such products is related to retail sales.
- There will be a recurring increase in state revenue in FY23-24 and subsequent years of \$12,000,000 ($\$200,000,000 \times 6\%$). Of such revenue, DOA and DOR will each be allocated \$6,000,000 ($\$12,000,000 \times 50\%$).
- This legislation establishes licensing fees of \$500 for suppliers and \$250 for retailers, both requiring annual renewal.
- All license fee revenue is required to be allocated to the TAR Fund to be used exclusively for the administration of this program.
- The exact number of supplier and retailer licenses which will be issued subsequent to this act is unknown.
- For purposes of this fiscal note, it is assumed that there will be 200 supplier licenses and 4,000 retail licenses issued statewide, which will all seek licenses in the first fiscal year.
- There will be an increase in state licensing fee revenue to the TAR Fund in FY23-24 and subsequent years of \$1,100,000 $[(200 \text{ suppliers} \times \$500) + (4,000 \text{ retailers} \times \$250)]$.
- This legislation establishes civil penalty fees for violations of this act or rules promulgated by the DOA; however, for purposes of this fiscal note, any such fee revenue is assumed to be not significant.

Expenditures:

- Based on information provided by the DOA, the department will require 16 additional positions, including three additional food and dairy inspector-2 positions per grand district, or nine additional inspector positions statewide, three additional administrative services assistant-2 positions, three additional laboratory technician-2 positions, and one project director position.
- It is assumed that these positions will be filled on January 1, 2024, in preparation of the July 1, 2024 effective date of this act; therefore, in FY23-24, the increase in state expenditures for such positions will be equal to one-half year's impact.
- This legislation requires expenditures incurred by the DOA in the administration of this act be incurred out of the TAR Fund and revenue allocated to the DOA from the six percent retail tax.
- There will be a one-time increase in state expenditures in FY23-24 of \$19,200 for computers.
- There will be a total increase in state expenditures to the DOA and TAR Fund of \$604,518 $\{[(\$895,104 \text{ salaries} + \$265,931 \text{ benefits} + \$9,600 \text{ supplies}) \times 50\% \text{ half-year's impact}] + \$19,200 \text{ computers}\}$ in FY23-24.
- There will be a recurring increase in state expenditures to the DOA and TAR Fund \$1,170,635 $(\$895,104 \text{ salaries} + \$265,931 \text{ benefits} + \$9,600 \text{ supplies})$ in FY24-25 and subsequent years.

- Based on information provided by the DOR, the department will require at least six additional tax auditor-2 positions for this new tax, beginning July 1, 2023.
- Expenditures incurred by the DOR for administration and enforcement of this legislation will be paid for with the revenue allocated to the DOR from the six percent retail tax.
- There will be a one-time increase in state expenditures in FY23-24 of \$7,200 for computers.
- There will be a recurring increase in state expenditures to the DOR of \$471,036 (\$356,976 salaries + \$103,262 benefits + \$3,600 supplies + \$7,200 computers) in FY23-24.
- There will be a recurring increase in state expenditures to the DOR of \$463,836 (\$356,976 salaries + \$103,262 benefits + \$3,600 supplies) in FY24-25 and subsequent years.

Background Checks/Other:

- Pursuant to § 43-27-206(b)(D) of this legislation, each application for either supplier or retailer license must include a completed background check from each person seeking a license.
- The proposed legislation states that background checks are required in order to obtain and maintain a supplier or retailer license. Therefore, it is assumed the such background checks will be performed on all applicants on an annual basis.
- For purposes of this legislation, it is assumed that on average two individuals will need to submit to a background check per license, regardless of whether it is a supplier or retailer license.
- The Tennessee Bureau of Investigation (TBI) charges a fee of \$37.15 to collect one sample of fingerprints and perform one criminal background check.
- Of the \$37.15, \$13.25 is forwarded to the Federal Bureau of Investigation to run a check, \$10.65 is forwarded to the vendor that collects the fingerprints, and \$13.25 is retained by the TBI to run a check through their system.
- In FY23-24 and subsequent years, TBI will realize \$312,060 [(200 supplier licenses + 4,000 retailer licenses) x 2 background checks x \$37.15] in revenue and expenditures of \$200,760 [(200 supplier licenses + 4,000 retailer licenses) x 2 background checks x (\$13.25 + \$10.65)].
- There will not be a sufficient number of prosecutions for state or local government to experience any significant increase in revenue or expenditures.
- The DOA and DOR will need additional resources including, but not limited to, eventually employing additional staff. The extent and timing of the needed resources will be dependent on the promulgation of rules and the growth of the program and cannot be reasonably quantified at this time. Any additional expenditures incurred will be covered through the revenue collected by the two departments.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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